(18,591.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 77.

THE WISCONSIN AND MICHIGAN RAILWAY COMPANY, APPELLANT,

vs.

PERRY F. POWERS, AUDITOR GENERAL OF THE STATE OF MICHIGAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 22, 1903.

1 United States Supreme Court.

WISCONSIN & MICHIGAN RAILWAY COMPANY, Appellant,
v.
PERRY F. POWERS, Auditor General of the State of Michigan, Appellee. } No. —.

Return to claim of appeal of the above named appellant from the circuit court of the United States for the eastern district of Michigan, southern division, in equity.

Jesse B. Barton, Esq., 311 Grand Central passenger station, Chicago, Ill., solicitor for appellant.
Horace M. Oren, Esq., attorney general, Lansing, Michigan, solicitor for appellee.

2 Pleas of the Circuit Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, of the March Term, A. D. 1901.

WISCONSIN & MICHIGAN RAILWAY COMPANY
vs.
PERRY F. POWERS, Auditor General. } No. 3727.

Bill of Complaint.

And now on this day, that is to say on the 18th day of May, 1901, comes the complainant, Wisconsin & Michigan Railway Company, by Jesse B. Barton, its solicitor, and files in said court a bill of complaint, which bill of complaint is in words and figures following, to-wit:

UNITED STATES OF AMERICA, *Sixth Circuit*, } *ss:*

In the Circuit Court of the United States for the Eastern District of Michigan.

To the honorable judges of the circuit court of the United States for the eastern district of Michigan, in chancery sitting:

Humbly complaining showeth unto your honors your orator The Wisconsin and Michigan Railway Company, that it is a corporation created, organized and existing under and by virtue of the laws of the State of Wisconsin, by charter duly patented and issued
3 to it on, to-wit, October 26th, 1893, wherein and whereby it was authorized and empowered to construct, maintain, and operate a railroad from a point in the city of Marinette to some point in the boundary line between the States of Wisconsin and Michigan in the Menominee river in township thirty-four (34) north of range twenty-two (22) east.

That on, to-wit, October 23rd, 1893, the Menominee and Northern Railroad Company was duly created and organized under and by virtue of the laws of the State of Michigan and in and by its charter or articles of incorporation the said Menominee and Northern Railroad Company was authorized and empowered to construct a railroad in and through the county of Menominee in the State of Michigan from a point on the State line between the States of Wisconsin and Michigan in the Menominee river to the north line of section three (3) in township thirty-eight (38) north of range twenty-eight (28) west.

That in pursuance of its said charter and its said articles of incorporation the said Monominee and Northern Railroad Company did thereafter and on, to-wit, October 23rd, 1893, acquire property and right of way for the construction of its railroad over and along the route described in its said charter and articles of incorporation. That on, to-wit, October 23rd, 1893, the said Menominee and Northern Railroad Company in anticipation of the incorporation of your orator and under and by virtue of the laws of the State of Michigan then in force, sold and conveyed to your orator for a valuable consideration to it from your orator moving all of the property, rights and franchises of it, said Menominee and Northern Railroad Company, and your orator did on to-wit, October 26th, 1893, take
4 possession of all the property rights and franchises of the said Menominee and Northern Railroad Company and has ever since possessed, held, used and enjoyed the same; and your orator further represents that in order to ratify and confirm in your orator its right, title and interest in and to all the property, rights and franchises of said Menominee and Northern Railroad Company, it the said Menominee and Northern Railroad Company did thereafter and on, to-wit, August 3rd, 1894, by its deed of conveyance of that date, duly executed, sell, assign, transfer, convey, and set over to your orator all of its rights, interests and franchises aforesaid.

That upon the sale and conveyance aforesaid and after said October 23rd, 1893, your orator did construct its railroad upon and along the routes aforesaid, to-wit, the several routes described in the charter and articles of incorporation of your orator and in the charter and articles of incorporation of the said Menominee and Northern Railroad Company, and completed the same and put the same in operation, on to-wit, November 1st, 1894, and has ever since said November 1st, 1894, maintained and operated the same as one continuous line of railroad running from the city of Peshtigo in the State of Wisconsin to Faithorn Junction in the State of Michigan of which said continuous line of railroad 28 8/10 miles thereof are situated in the State of Wisconsin and 32 6/10 miles thereof are situated in the State of Michigan all of which is situated north of the forty-fourth parallel of latitude.

Your orator further represents that at and prior to the 27th day of May, 1893, those parts of the State of Michigan which are situated north of the forty-fourth parallel of latitude were rich in
5 minerals and lumber which to a large extent were undeveloped for lack of proper means of transportation; that such

parts were sparsely, or not at all settled except at and in the immediate vicinity of lake ports, and along the lines of the few railroads which had theretofore been constructed therein, and but a small area compared to the total area of the same had been developed for agricultural purposes; and that the history of agricultural development in such parts had shown that the progress of the same depended first on the removal of the timber valuable in commerce and the building up of mining and other interests in the interior and the creation of transportation facilities to the mining camps and other industrial centers and lake ports.

And your orator further represents that at the regular meeting of the legislature of the State of Michigan held in the year 1893 an act was passed which was approved and in force May 27th, 1893, entitled, "An act to amend section three of article three of act number one hundred and seventy-four of the public acts of eighteen hundred eighty-three, entitled, 'An act to amend sections seven, thirty, thirty-six and forty-one of article two, and sections three and five of article three, and section fourteen of article four, and to add two new sections to article two, to stand as sections forty-five and forty-six, and a new section to article five, to stand as section twenty-two of an act, entitled, 'An act to revise the laws providing for the incorporation of railroad companies and to regulate the running and management, and to fix the duties and liabilities of all railroads and other corporations owning or operating any railroad in this State,'" approved May one, eighteen hundred seventy-three, being act number one hundred and ninety-eight, session laws of eighteen hundred and seventy-three as amended by act number one hundred and seventy-four of the public acts of eighteen hundred ninety-one."

6 Section 3 of which said act is as follows:

SEC. 3. "Every railroad company formed under the provisions of this act or which now is or may hereafter be brought under the provisions of the general law of this State for the taxation of railway or railroad corporations and every railroad company owning or operating any railroad situated in whole or in part in this State shall, on or before the first day of July in each year, pay to the State treasurer on the statement of the auditor general a specific tax upon the property and business of such railroad corporation operated within the State, which tax shall be computed in the following manner, viz.: Upon all such gross income not exceeding two thousand dollars per mile of road actually operated within this State, two per cent. of such gross income; upon such gross income in excess of two thousand dollars and not exceeding four thousand dollars per mile, two and one-half per cent. thereof; upon all such gross income in excess of four thousand dollars and not exceeding six thousand dollars per mile, three per cent. thereof; and upon all such gross income in excess of six thousand dollars per mile, not in excess of eight thousand dollars per mile, three and one-half per cent. thereof; and upon all such gross income in excess of eight thousand dollars per mile of road so operated, four per cent. thereof.

And when the railroad lies partly within and partly without this

State, *prima facie*, the gross income of said company from such road for the purposes of taxation shall be on the actual earnings of the road in Michigan, computed by adding the income derived from the business transacted by said company entirely within this State, such proportion of the income of said company arising from inter-
7 state business, as the length of the road over which said interstate business is carried in this State bears to the entire length of the road over which said interstate business is carried. The taxes so paid shall be in lieu of all other taxes upon the properties of such companies, except such real estate as is owned and can be conveyed by such corporations under the laws of this State, and not actually occupied in the exercise of its franchises, and not necessary or in use in the proper operation of its road, but such real estate so excepted shall be liable to taxation in the same manner, and for the same purposes, and to the same extent, and subject to the same conditions and limitations as to the collection and return of taxes thereon as is other real estate in the several townships or municipalities within which the same may be situated: Provided further, that the rate of taxation fixed by this act or any other law of this State shall not apply to any railway company hereafter building and operating a line of railroad within this State north of parallel forty-four of latitude until the same has been operated for the full period of ten years, unless the gross earnings shall equal four thousand dollars per mile, except in so far as said line so built shall extend south of said parallel, but no such company shall be entitled to the immunity from taxation herein provided, when the same is owned or operated by existing companies, until the report of earnings to the commissioner of railroads required by the laws of this State, containing the earnings of such lines hereafter built, separate and distinct from the earnings of existing lines shall be made and filed.

All acts and parts of acts contravening the provisions of this act are hereby repealed.

This act is ordered to take immediate effect

Approved May 27, 1893."

8 And your orator submits that neither it nor said Menominee and Northern Railroad Company was in existence on said May 27th, 1893, and that its gross earnings have never in any year subsequent to said May 27th, 1893, been equal to four thousand dollars per mile. And your orator further represents that at the time of the passage of the last mentioned act of the legislature of the State of Michigan, to-wit: May 27th, 1893, and at the time of the incorporation of said Menominee and Northern Railroad Company, to-wit: October 23rd, 1893, and at the time of the sale and delivery by the said Menominee and Northern Railroad Company of all its property, rights, and franchises to your orator, and at the time when your orator began the construction of its lines of railroads along and upon the routes aforesaid, large areas of timber adjacent to said routes were uncut and undeveloped and little or no agricultural development had been made along said routes and no

city, town or village had been built along said route except at the southern terminus thereof.

"That since the construction by your orator of the railroads along the routes aforesaid several towns or villages have been built along said routes, to-wit: Fisher, Nathan and Faithorn Junction, having an aggregate population of seven hundred persons and large tracts of land have been placed under cultivation and are now being cultivated, aggregating, to-wit: 1370 acres and large numbers of farms have been developed along and in the vicinity of said route, to-wit: 34 farms, for the products all of which your orator furnishes means of transportation to favorable markets and thereby the said State of Michigan and the inhabitants thereof have been materially benefited and the property in said State subject to taxation for State and local purposes has been and now is materially increased."

9 Wherefore your orator submits that by reason of the premises the provisions above quoted of the said act of the legislature of the State of Michigan became and were and are a valid part of a valid contract between your orator and said State of Michigan for a good and valuable consideration then and there moving to said State of Michigan from your orator the obligations of which are protected from impairment by virtue of the Constitution of the United States of America and by the constitution of said State of Michigan, by any subsequent acts of the legislature of said State of Michigan or by the acts or doings of any of the officers of said State pretending to act under or by authority of any subsequent acts of said legislature.

Nevertheless the said legislature of the State of Michigan regardless of your orator's rights in the premises did pass an act approved June 4th, 1897, entitled "An act to amend section three (3) of article three (3) of act one hundred and ninety-eight (198), session laws of eighteen hundred and seventy-three, as amended by act forty-five (45) public acts of eighteen hundred and seventy-nine, as amended by act one hundred and seventy-four (174), public acts of eighteen hundred and ninety-one, as amended by act one hundred and twenty-nine (129), public acts of eighteen hundred and ninety-three, entitled, "An act to revise the laws providing for the incorporation of railroad companies, and to regulate the running and management, and to fix the duties and liabilities of all said roads and other corporations, owning or operating any railroad in this State," approved May one, eighteen hundred and seventy-three, being compiler's section three thousand three hundred and sixty (3360), Howell's Annotated Statutes of Michigan."

Which is in words and figures as follows, to-wit:

10 "SECTION 1. The People of the State of Michigan enact, That section three (3) of article three (3) of act one hundred and ninety-eight (198), session laws of eighteen hundred and seventy-three, as amended by act forty-five (45) public acts of eighteen hundred and seventy-nine, as amended by act one hundred and seventy-four (174), public acts of eighteen hundred and ninety-one, as amended by act one hundred and twenty-nine (129), public acts of

eighteen hundred and ninety-three, entitled, 'An act to revise the laws providing for the incorporation of railroad companies, and to regulate the running and management, and to fix the duties and liabilities of all said roads and other corporations, owning or operating any railroad in (this) the State,' approved May one, eighteen hundred and seventy-three, being compiler's section three thousand three hundred and sixty (3360), Howell's Annotated Statutes of Michigan, be and the same is hereby amended so as to read as follows:

SEC. 3. Every railroad company and union railroad station and depot company owning or operating any railroad situated in whole or in part in this State, shall, on or before the first day of July in each year, pay to the State treasurer on the statement of the auditor general a specific tax upon the property and business of such railroad corporation operated within the State, which tax shall be computed in the following manner, viz., namely: Upon all such gross income not exceeding two thousand dollars per mile of road actually operated within this State, two and one-half per cent. of such gross income; upon such gross income in excess of two thousand dollars and not exceeding four thousand dollars per mile, three and one-half per cent. thereof; upon all such gross income in excess of four thousand dollars and not exceeding six thousand dollars per mile,
11 four per cent. thereof; and upon all such gross income in excess of six thousand dollars per mile, and not exceeding eight thousand dollars per mile, four and one-half per cent. thereof; and upon all such gross income in excess of eight thousand dollars per mile of the road so operated, five per cent. thereof; that all gross income of union railroad station and depot companies whose earnings are in excess of twenty thousand dollars per mile shall pay on all such gross incomes in excess of twenty thousand dollars per mile of road so operated, ten per cent. thereof. And when the railroad lies partly within and partly without this State, *prima facie*, the gross income of said company from such road for the purposes of taxation shall be on the actual earnings of the road in Michigan, computed by adding to the income derived from the business transacted by said company entirely within this State, such proportion of the income of said company arising from the interstate business as the length of the road over which said interstate business is carried in this State bears to the entire length of the road over which said interstate business is carried. The taxes so paid shall be in lieu of all other taxes upon the properties of such companies, except such real estate as is owned and can be conveyed by such corporations under the laws of this State, and not actually occupied in the exercise of its franchises, and not necessary or in use in the proper operation of its road, but such real estate so *accepted* shall be liable to taxation in the same manner, and for the same purposes, and to the same extent, and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities within which the same may be situated.

All acts or parts of acts contravening the provisions of this section of this act are hereby repealed."

12 And your orator represents that the several officers of the said State of Michigan now claims that said last mentioned act repealed and abrogated, said act approved May 27th, 1893, and that all the provisions thereof including that provision under which your orator was exempt from taxation for a period of ten years from and after November 1st, 1894, were repealed and abrogated, and so claiming the commissioner of railroads of said State has made out and certified to the auditor general of said State, statements of what they, said commissioner of railroads and said auditor general term specific taxes which said auditor general has demanded that your orator pay to the State treasurer of said State and which said auditor general claims now constitutes a lien on all of your orator's property and franchises in said State and he the said auditor general now threatens that unless your orator pay the same forthwith to said State treasurer, he the said auditor general will immediately institute summary proceedings under the laws of said State and enforce said alleged lien and sell your orator's property and franchises to satisfy the same, and as a penalty for non payment to annul all of your orator's corporate rights and franchises in said State of Michigan including the rights and franchises of said Menominee and Northern Railroad Company vested in your orator by purchase as aforesaid. And said officials further claim that they are sustained and upheld in their said position and contention by the decision and opinion of the supreme court of said State of Michigan rendered and given in the case of Manistee and North Eastern Railroad Company vs. Commissioner of Railroads, reported in 119 Michigan Reports 349, in which it is claimed said act

13 of 1897 was declared constitutional, reference to which decision and opinion is hereby made for greater certainty and particularity. That the claims of said commissioner of railroads and said auditor general are that a specific tax accrued against your orator's railroads, property, and franchises amounting to $298.07 for that part of the year 1897 subsequent to August 29th, 1897; amounting to $693.01 for the year 1898, and amounting to $852.79 for the year 1899 to all of which they have added penalties and for all of which including such penalties said auditor general has demanded payment as aforesaid; your orator hereby representing and declaring that the said officers in so estimating the said so-called specific taxes demanded of your orator acting pursuant to authority claimed to be conferred by the said act of 1897, did take and have taken as a basis therefor the entire income of your orator derived from its business transacted wholly within the State of Michigan, together with such proportion of its income derived from interstate business which the mileage of your orator's said railroad in the State of Michigan bears to the whole mileage of said railroad wherever situated.

And your orator further represents that the gross income received from it by the operation of so much of its said lines of railroad as

lie and are situated within the State of Michigan are and have been ever since said August 29th, 1897, largely derived from the transportation of freight and passengers from points in said State of Michigan to points in the State of Wisconsin and from points in the State of Wisconsin to points in the State of Michigan which is and was interstate commerce and your orator submits that any attempt to tax the same by the State of Michigan or its officers is an interference with interstate commerce and is illegal and void under the Constitution and laws of the United States.

14 And your orator further represents that its gross earnings on business which was transacted wholly within the State of Michigan was, from August 29th, 1897, to January 1st, 1898, the sum of to-wit; $3,320.00; for the year 1898 the sum of $7,844.49, and for the year 1899 the sum of $5,443.26; and that its gross earnings on interstate business which either originated or terminated in the State of Michigan, was from August 29th, 1897, to January 1st, 1898, the sum of to-wit: $8,850.00; for the year 1898 the sum of $19,875.96, and for the year 1899 the sum of $28,668.56; and your orator respectfully submits that in estimating taxes which it should pay to the State of Michigan the officers of said State have no power, authority or jurisdiction to tax your orator's said interstate commerce business, and that such taxation is an interference with and imposition upon interstate commerce and that the officers of said State are prohibited from making such interferences and imposition by the Constitution and laws of the United States.

Nevertheless and regardless of the premises, one Perry F. Powers, auditor general of the State of Michigan, claims that the several sums aforesaid constitute a specific tax against your orator and are a lien on your orator's property in the State of Michigan and that in default of payment of the same your orator is subject to summary proceedings in the courts of said State not only a sale of your orator's property for the payment of said alleged special taxes but for a forfeiture of all your orator's rights, licenses, and franchises in the said State of Michigan and threatens to and will institute such proceedings and will seriously embarrass your orator and cause its irreparable injury and involves it in a multiplicity of suits.

15 For-as-much, therefore, as your orator is without remedy in the premises, except in a court of equity, it exhibits to this honorable court this, its bill of complaint and prays that the said Perry F. Powers, auditor general of the State of Michigan, be made a party defendant hereto, and that he true answer make to this bill of complaint, but not under oath, his answer under oath being hereby expressly waived, that upon a final hearing hereof the said act of 1897, so far as the same repeals or attempts to repeal the said act of 1893, be adjudged and decreed as against your orator, to be in the impairment of a contract theretofore made with your orator, and unconstitutional and void; and that the said act of 1897 in so far as it provides for the imposition of taxes on the interstate commerce business of your orator, be adjudged and decreed to be an interference with and imposition upon interstate commerce and un-

constitutional and void, and that the said Perry F. Powers, auditor general of the State of Michigan be enjoined and restrained from collecting or attempting to collect, and from attempting to enforce the payment of said so-called special taxes levied and charged against your orator from and after August 29th, 1897, and that your orator have such other or further relief in the premises as in equity it is entitled to and to your honors shall seem meet.

May it please your honors to issue or cause to be issued a writ of subpœna in chancery directed to the said Perry F. Powers, auditor general of the State of Michigan, commanding him to be and appear before this honorable court on a certain day to be therein named and to stand to and abide by all orders and decrees entered herein.

That the writ of injunction issued out of this honorable court restraining and enjoining the said Perry F. Powers, auditor general of the State of Michigan, from collecting or attempting
16 to collect any so-called specific tax levied and assessed or pretended to be levied and assessed against your orator in the State of Michigan in the years 1897, 1898 and 1899, until the further order of this court; and your orator will ever pray, etc.

JESSE B. BARTON,
Solicitor for Complainant.

WISCONSIN AND MICHIGAN
RAILWAY COMPANY,
By JESSE B. BARTON, *Its Attorney.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

O. A. Koss being duly sworn says he is the secretary of The Wisconsin and Michigan Railway Company, complainant in the above and foregoing bill of complaint and makes this affidavit as the agent and in behalf of said company; that he has read the above and foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge.

O. A. KOSS.

Subscribed and sworn to before me this 17th day of May, A. D., 1901.

[SEAL.] ROBERTA M. SHAW,
Notary Public.

17 *Subpœna.*

Afterwards, to-wit, and now on this day, that is to say, on May 18th, 1901, a writ of subpœna was duly issued out of and under the seal of this court, which writ of subpœna with due proof of service thereon was returned and filed the 11th day of June, 1901, in words and figures following, to-wit:

Circuit Court of the United States of America for the Sixth Circuit and Eastern District of Michigan, Southern Division, Sitting in Chancery.

[SEAL.] The President of the United States of America to Perry F. Powers, auditor general of the State of Michigan, a citizen of the State and resident of the eastern district of Michigan:

You are hereby commanded to be and appear in the circuit court of the United States of America, for the sixth circuit and eastern district of Michigan, sitting in chancery, before the judges thereof, at the circuit court room, in the city of Detroit, on the first Monday of July next ensuing, then and there to answer unto a bill of complaint exhibited against you as defendant by The Wisconsin & Michigan Railway Company, a corporation created, organized and existing under and by virtue of the laws of the State of Wisconsin, and a citizen and resident of said State, as complainant. And this you shall in no wise omit under the penalty of one thousand dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of May in the year of our Lord
18 one thousand nine hundred and one, and of the Independence of the United States, the one hundred and twenty-fifth.

WALTER S. HARSHA, *Clerk.*

MEMORANDUM.—The above named defendant is required to enter his appearance in this suit with the clerk of this court, at his office in the city of Detroit, on or before the day on which this writ of subpœna is returnable, otherwise the bill of complaint in this cause will be taken *pro confesso* against said defendant.

WALTER S. HARSHA, *Clerk.*

Service of this subpœna is hereby acknowledged and accepted.

PERRY F. POWERS,
Auditor General,
By HENRY E. CHASE,
Deputy Attorney General.

Dated June 11th 1901.

19 *Præcipe for Appearance.*

Afterwards, to-wit, and now on this day, that is to say, on the 15th day of June, 1901, comes the defendant, Perry F. Powers, by Horace M. Oren, his solicitor, and files in said court a præcipe for appearance, which præcipe is in words and figures following, to-wit:

The Circuit Court of the United States, Eastern District of Michigan, Southern Division. In Equity.

WISCONSIN & MICHIGAN RAILWAY COMPANY
vs.
PERRY F. POWERS, Auditor General of the State of Michigan. } No. 3727.

In this cause, on motion of Horace M. Oren, attorney general, solicitor for Perry F. Powers, auditor general of the State of Michigan, defendant herein, it is ordered that the appearance of said defendant be and the same hereby is entered herein.

May 13, 1901.

HORACE M. OREN,
Solicitor for Defendant.

Business address: Capitol, Lansing, Mich.

20 *Entry of Appearance.*

Afterwards, to-wit, and now on this day, that is to say, on the 15th day of June, 1901, the appearance of said defendant was duly entered by the clerk of said court in the chancery order book kept in his office, which entry is in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division.

WISCONSIN & MICHIGAN RAILWAY COMPANY
vs.
PERRY F. POWERS, Auditor General of the State of Michigan. } No. 3727. June 15, 1901.

In this cause, on motion of Horace M. Oren, attorney general, solicitor for Perry F. Powers, auditor general of the State of Michigan, defendant herein, it is ordered that the appearance of said defendant be, and the same is hereby entered. And on like motion it is further ordered that the complainant, or its solicitor, deliver copy of the bill of complaint to the solicitor for said defendant within twenty (20) days after service of notice of this order, and in default thereof that said bill be dismissed with costs as to said defendant.

WALTER S. HARSHA, *Clerk.*

21 *Demurrer.*

Afterwards, to-wit, and now on this day, that is to say, on the 25th day of June, 1901, come the said defendant by his said solicitor, and files in said court a demurrer to complainant's bill of complaint, which demurrer is in words and figures following, to-wit:

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

WISCONSIN & MICHIGAN RAILWAY COMPANY
vs.
PERRY F. POWERS, Auditor General of the State of Michigan. } No. 3727.

The demurrer of the above named defendant to the bill of complaint of the above named complainant.

This defendant by protestation, not confessing or acknowledging any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, demurs to the said bill; and for cause of demurrer showeth that under the facts stated in said bill of complaint, said complainant is not entitled to the relief prayed for, for the reasons:

1. That act No. 129 of the public acts of 1893, (approved May 27, 1893), set forth in said bill of complaint and relied upon by
22 said complainant as constituting a contract between itself and the State of Michigan, did not create and does not at the present time constitute a valid contract or a part of a valid contract between the said State and said complainant, exempting said complainant from taxation for the period therein specified.

2. That act No. 228 of the public acts of 1897, (approved June 4, 1897,) set forth in said bill of complaint, repealing and abrogating the exemption from taxation granted in said act No. 129 of the public acts of 1893, and under which this defendant and the commissioner of railroads have acted in computing the taxes of the said complainant, is a valid and constitutional law.

3. That this proceeding, though nominally against this defendant, is in fact a suit against the State of Michigan.

Wherefore, and for diverse other good causes of demurrer appearing in said bill, this defendant demurs theret- and prays the judgment of this court whether he shall be compelled to make any answer to said bill; and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

HORACE M. OREN,
Attorney General, Solicitor and of Counsel for Defendant.

Capitol, Lansing, Mich.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

June 24th, 1901.

HORACE M. OREN,
Of Counsel for Defendant.

STATE OF MICHIGAN,
County of Ingham, Eastern District of Michigan, } ss:

23 Perry F. Powers, being duly sworn, deposes and says: I am the above named defendant; and the foregoing demurrer is not interposed for delay.

PERRY F. POWERS.

Subscribed and sworn to before me on this 24th day of June, 1901.

GURDEN L. WRIGHT,
[SEAL.] *Notary Public, Ingham County, Michigan.*

Demurrer Argued and Submitted.

Afterwards, to-wit, and now on this day, that is to say, on September 9th, 1901, said demurrer was argued and submitted, a memorandum of which was duly entered by the clerk in the journal of the proceedings of said court, which memorandum is in words and figures following, to-wit:

At a session of the circuit court of the United States for the eastern district of Michigan continued and held pursuant to adjournment at the district court room in the city of Detroit on Monday the ninth day of September in the year one thousand nine hundred and one.

Present: The Honorable Henry H. Swan, district judge.

24 WISCONSIN & MICHIGAN RAILWAY Company
vs.
PERRY F. POWERS, Auditor General of the State of Michigan. } No. 3727. In Equity.

In this cause a demurrer coming on to be heard on this day is argued by counsel for respective parties and submitted, with leave to file briefs.

Order Sustaining 1st and 2nd Grounds of Demurrer.

Afterwards, to-wit, and now on this day, that is to say, on May 1st, 1902, an order was made in said cause, a memorandum of which was entered by the clerk in the journal of the proceedings of said court, which order is in words and figures following, to-wit:

At a session of the circuit court of the United States for the eastern district of Michigan continued and held pursuant to adjournment at the district court room in the city of Detroit on Thursday the first day of May in the year one thousand nine hundred and two.

Present: The Honorable Henry H. Swan, district judge.

25 WISCONSIN & MICHIGAN RAILWAY Company
vs.
PERRY F. POWERS, Auditor General of the State of Michigan.
No. 3727. In Equity.

This cause came on to be heard upon demurrer of the defendant to the complainant's bill, and the same having been duly argued and submitted, after due deliberation thereon, the said demurrer is sustained as to the first and second grounds thereof; and it is ordered, adjudged and decreed that the complainant's bill of complaint be, and the same is hereby dismissed with costs in favor of the defendant to be taxed and that said defendant have execution therefor.

Petition for Allowance of Appeal and Assignments of Error.

Afterwards, to-wit, and now on this day, that is to say, on May 19th 1902, come- the said complainant by its said solicitor, and files in said court its petition for allowance of appeal, and assignments of error, which petition and assignments are in words and figures following, to-wit:

UNITED STATES OF AMERICA, *Eastern District of Michigan,* } *ss:*

WISCONSIN & MICHIGAN RAILWAY Company
vs.
PERRY F. POWERS, Auditor General of the State of Michigan.
No. 3727. In Equity.

26 Comes now the complainant by its solicitor or counsel, and files its petition for allowance of appeal and assignment of errors herein, in the words following, to-wit:

Petition for Allowance of Appeal.

The above named complainant deeming itself aggrieved by the judgment, order and decree of said circuit court made and entered in the above cause on the first day of May, 1902, prays the court for the allowance of an appeal in said cause for the reasons specified in the assignment of errors filed herewith and prays the court that a transcript of the record, proceedings and papers upon which said judgment, order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

JESSE B. BARTON,
Solicitor for Complainant.

Dated May 17th, 1902.

Assignments of Error.

The complainant in its action in connection with this petition for an allowance of an appeal makes the following assignment of errors, which it avers occurred in the trial of said cause, to-wit:

1. The court erred in sustaining the demurrer of the defendant as to the first paragraph thereof.
2. The court erred in sustaining the demurrer of the defendant as to the second paragraph thereof.
3. The court erred in sustaining the demurrer of the defendant to the bill of complaint herein.
4. The court erred in dismissing the bill of complaint for want of equity.

27 For which several reasons the complainant asks that the judgment, order and decree of the United States circuit court for the eastern district of Michigan be in all things reversed.

JESSE B. BARTON,
Solicitor for Complainant, Wisconsin & Michigan Railway Company.

Order Allowing Appeal.

Afterwards, to-wit, and now on this day, that is to say on May 19th, 1902, an order allowing appeal was granted by the court, a memorandum of which was duly entered by the clerk in the journal of the proceedings of said court, which memorandum is in words and figures following, to-wit:

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room in the city of Detroit on Monday the nineteenth day of May, in the year one thousand nine hundred and two.

Present: The Honorable Henry H. Swan, district judge.

WISCONSIN & MICHIGAN RAILWAY COMPANY vs. PERRY F. POWERS, Auditor General of the State of Michigan.	In Equity. No. 3727.

28 On reading and filing the petition of the said complainant, by Jesse B. Barton, its solicitor, for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, together with the assignments of error upon which the same is based, it is by the court now here ordered that an appeal be allowed from the judgment, order and decree of this court made and entered in the above entitled cause on the first day of May, 1902, to the Supreme Court of the United States, and that the amount of the bond on appeal be, and the same is, hereby fixed at the sum of five hundred dollars ($500.00).

29 *Bond on Appeal.*

Afterwards, to-wit, and now on this day, that is to say on June 4, 1902, a bond on appeal was duly filed in said court, which bond is in words and figures following, to-wit:

Know all men by these presents, that we, the Wisconsin & Michigan Railway Company, as principal, and National Surety Company a corporation of New York State, as sureties, are held and firmly bound unto Perry F. Powers, auditor general of the State of Michigan in the full and just sum of five hundred dollars, to be paid to the said Perry F. Powers, auditor general of the State of Michigan, certain attorneys, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of June in the year of our Lord one thousand nine hundred and two.

Whereas lately at a session of the circuit court of the United States for the eastern district of Michigan, southern division, in a suit depending in said court, between Wisconsin & Michigan Railway Company, complainant, and the said Perry F. Powers, auditor general of the State of Michigan, as defendant, a decree was rendered against the said complainant and the said complainant having obtained a claim of appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Perry F. Powers, auditor general
30 of the State of Michigan, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said Wisconsin & Michigan Railway Company, complainant, shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

WISCONSIN & MICHIGAN RAILWAY COMPANY,
By C. H. BOSWORTH, *Its President.* [SEAL.]

Attest: O. A. ROWE, *Secretary.* [SEAL.]

NATIONAL SURETY COMPANY,
By JOHN W. ANDERSON,
Resident Vice President.

[Seal of Surety Company.]

Attest: H. PENNY, JR.,
Resident Assistant Secretary.

[Seal of Railway Company.]

Approved by
HENRY H. SWAN,
U. S. District Judge.

Sealed and delivered in presence of
M. F. SCHUF.
J. T. JAMES.
E. E. PARMLEE.

Filed in clerk's office, June 4, 1902.
WALTER S. HARSHA, *Clerk.*

31 *Original Citation.*

The Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

To Perry F. Powers, auditor general of the State of Michigan, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court, to be holden at the city of Washington, on the 17th day of June next, pursuant to a claim of appeal filed in the clerk's office of the circuit court of the United States for the eastern district of Michigan, southern division, wherein The Wisconsin & Michigan Railway Company is appellant and you are appellee, to show cause, if any there be why the decree rendered against the said appellant as in the said claim of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 19th day of May, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States of America the one hundred and twenty-sixth.

HENRY H. SWAN,
U. S. District Judge, East. Dist. of Michigan.

I hereby accept service of the foregoing citation and enter appearance in the United States Supreme Court, as solicitor for appellee.

HORACE M. OREN,
Attorney General of the State of Michigan.

32 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

WISCONSIN & MICHIGAN RAILWAY COMPANY
v.
PERRY F. POWERS, Auditor General of the State of Michigan. } No. 3727.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify and return to the claim of appeal of the above named Wisconsin & Michigan Railway Company; that the above and foregoing is a true copy of the record and proceedings in said cause as the same appears of record

and on file in my office; that I have compared the same with the originals, and it is a true and correct transcript therefrom and of the whole thereof, together with the original citation.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district, this 13th day of June, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States of America the one hundred and twenty-sixth.

Seal of the Circuit Court, Eastern District of Michigan.

WALTER S. HARSHA, *Clerk.*

Endorsed on cover: File No. 18,591. E. Michigan C. C. U. S. Term No. 77. The Wisconsin and Michigan Railway Company, appellant, *vs.* Perry F. Powers, auditor general of the State of Michigan. Filed June 23d, 1902.